



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
TELECOMMUNICATIONS & ENERGY**

ONE SOUTH STATION

**BOSTON, MA 02110
(617) 305-3500**

JANE SWIFT
GOVERNOR

JENNIFER DAVIS CAREY
DIRECTOR OF CONSUMER
AFFAIRS
AND BUSINESS REGULATION

PAUL B. VASINGTON
CHAIRMAN

JAMES CONNELLY, ESQ.
COMMISSIONER

W. ROBERT KEATING
COMMISSIONER

EUGENE J. SULLIVAN, JR.
COMMISSIONER

DEIRDRE K. MANNING
COMMISSIONER

John Cope-Flanagan, Esq.
Assistant General Counsel
NSTAR Electric & Gas Corporation
800 Boylston Street
Boston, Massachusetts 02199

John Shortsleeve, Esq.
70 Bailey Blvd.
Haverhill, MA 01830

Robert N. Werlin, Esq.
John K. Habib, Esq.
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110

September 4, 2002

Re: Petition of the City of Waltham, D.T.E. 02-11

Dear Sirs:

On January 24, 2002, the city of Waltham ("Waltham" or "City") filed a Petition with the Department of Telecommunications and Energy ("Department") pursuant to G.L. c. 164, § 34A. Waltham sought resolution of a dispute with Boston Edison Company d/b/a NSTAR Electric ("BECo" or "Company") over the purchase price of streetlights that served the City (Exh. W-1, at 2). Specifically, Waltham requested that the Department resolve the allocation of the value of ancillary streetlight equipment between the City and BECo's commercial streetlight customers in Waltham. The Department docketed this matter as D.T.E. 02-11.

On April 11, 2002, the Department conducted a dispute resolution proceeding. Waltham presented the testimony of Leo Landry, inspector of wires, superintendent of fire alarms, and director of communications for Waltham. The Company presented the testimony of Bryant K. Robinson, manager of revenue requirements for NSTAR Electric and Gas Corporation ("NSTAR"). Initial and reply briefs were submitted by Waltham and BECo.

At the proceeding, the Company moved to dismiss the case (“Motion to Dismiss”). On April 18, 2002, Waltham filed a reply to the Motion to Dismiss, and on April 23, 2002, BECo responded to Waltham’s reply.

On April 19, 2002, pursuant to 220 C.M.R. § 1.11(7), Waltham filed a Motion to include two additional Exhibits in the record (“Waltham Motion”). On April 29, 2002, the Company filed a response opposing Waltham’s Motion. We will first address the Motion to Dismiss, then Waltham’s Motion, and finally the dispute concerning the Company’s valuation of Waltham’s streetlights.

Company’s Motion to Dismiss

The Company contends that the Petition should be dismissed because Waltham has failed to provide a basis for its complaint (Tr. at 26). The Company argues that Waltham proposed no evidence as to the appropriate valuation method that it believes should be applied nor did Waltham demonstrate how depreciation should be used in determining the valuation of the property (*id.*). BECo argues that the Company may move to dismiss this proceeding whether it is a “party” to an adjudicatory proceeding or not (Company Reply to Response of Waltham to BECo Motion to Dismiss at 2-3). Moreover, the Company states that it meets the definition of “party” to this proceeding because the Department is determining the property rights of BECo in this proceeding, and therefore its legal rights are at issue (*id.* at 4-6 (*citing* 220 C.M.R. § 1.03(2))). The Company contends that Waltham has not presented to the Department a *prima facie* case showing why it is entitled to relief; therefore, the Department should grant the Company’s Motion to Dismiss (*id.* at 10).

Waltham argues that BECo has no right to move to dismiss this case because a streetlight dispute resolution proceeding pursuant to G.L. c. 164, § 34A is not an adjudicatory proceeding, and the right to move to dismiss is only given to parties in an adjudicatory proceeding pursuant to G.L. c. 30A (Waltham Response to Company’s Motion to Dismiss at 1-2, 5-6, 8, 9). Waltham claims that even if the Department treats this proceeding as an adjudicatory proceeding, the motion to dismiss should be denied because the City has demonstrated the unreasonableness of the Company’s method of allocating Waltham’s street light equipment (*id.* at 6-7, 9).

Analysis and Findings on Company’s Motion

Department regulations state that a “party” to a Department proceeding is any person who “by any provision of the General Laws is entitled to participate fully in such proceeding and who enters an appearance” 220 C.M.R. § 1.03(2)(b) (emphasis added). Waltham and BECo are both entitled to participate fully in a G. L. c. 164, § 34A dispute resolution proceeding concerning the purchase of streetlights in BECo service territory. Waltham raised a § 34A issue in its Petition, and BECo is entitled to respond. Therefore, BECo and Waltham are parties because they are entitled to participate in a 34A proceeding. Accordingly, for the purpose of filing a motion in a § 34A proceeding, we conclude that BECo has standing to

move to dismiss this case.¹ Under 220 C.M.R. § 1.03(2)(b), the proceeding need not be an adjudicatory proceeding to enable a party to file a motion to dismiss. Petition of the Town of Foxborough, D.T.E. 02-30, at 2 (2002). We next rule on the Motion.

The Department's Procedural Rule, 220 C.M.R. § 1.06(6)(e), authorizes a party to move for dismissal of "all issues or any issue in [a] case" at any time after the filing of an initial pleading. The Department's current standard for ruling on a motion to dismiss for failure to state a claim upon which relief can be granted was articulated in Riverside Steam & Electric Company, D.P.U. 88-123, at 26-27 (1988).² In Riverside, the Department denied the respondent's motion to dismiss, finding that it did not "appear [] beyond doubt that [the petitioner] could prove no set of facts in support of its petition."³ Riverside at 26-27.

In determining whether to grant a motion to dismiss, the Department takes the assertions of fact as true and construes them in favor of the non-moving party. Id. at 26-27. Dismissal will be granted by the Department if it appears that the non-moving party would be entitled to no relief under any statement of facts that could be proven in support of its claim. Id.

Once a request to resolve a dispute is properly raised by a § 34A petition, the Department is required by statute to resolve it. G.L. c. 164, § 34A(d). Pursuant to 220 C.M.R. § 1.04(1)(b), a complainant must provide certain information (e.g., a clear and concise statement of the facts upon which the pleading is maintained, a reference to the statute under which relief is sought, and a statement setting forth the relief sought). In this proceeding, Waltham filed a written complaint with the Department requesting that the Department resolve a dispute concerning a term in the Purchase and Sale Agreement between Waltham and the Company (Exhs. W-1; W-3). Waltham has set forth sufficient facts evidenced in the Purchase and Sale Agreement asserting that the purchase price offered by the Company "unfairly overstates the purchase price by making an inequitable allocation between the municipal and private streetlights" (Exh. W-3, at 28). Therefore, Waltham's complaint has been properly pled under both G.L. c. 164, § 34A, and 220 C.M.R. § 1.04(1)(b).

¹ Moreover, BECo is an electric company subject to the regulatory authority of the Department, even when G.L. c. 164, § 34A may not be applicable. G.L. c. 164; G.L. c. 25.

² Procedures for dismissal and summary judgment can properly be applied by an administrative agency where the pleadings and filings conclusively show that the absence of a hearing could not affect the decision. Massachusetts Outdoor Advertising Counsel v. Outdoor Advertising Board, 9 Mass. App. Ct. 775, 783-786 (1980); Hess and Clark, Div. of Rhodia, Inc. v. Food and Drug Administration, 495 F. 2d 975, 985 (D.C. Cir. 1974).

³ Although Riverside refers to Massachusetts Rule of Civil Procedure 12(b)(6), the Department has not formally adopted Rule 12(b)(6). See Attorney General v. Department of Public Utilities, 390 Mass. 208, 212-213 (1983) (rules of court do not govern procedure in executive Department).

We are not persuaded by the Company's arguments that (1) Waltham has provided no basis for its complaint, and (2) Waltham proposed no evidence as to the appropriate valuation method that it believes should be applied (Tr. at 26). Waltham purchased the Company's streetlights in January, 2002. However, pursuant to the Purchase and Sale Agreement, the Company agreed to give Waltham

the right to secure a rebate from the Company in the event that the [Department] determines that the purchase price offered by the [C]ompany . . . unfairly overstates the purchase price by making an inequitable allocation between the municipal and private streetlights.

(Exh. W-3, at 28).

This provision is evidence of the fact that (1) BECo and Waltham consented for the Department to determine the allocation between municipal and private streetlights; and (2) BECo and Waltham agreed that Waltham may be entitled to a rebate should the Department determine that the allocation was "inequitable." We conclude that these facts form a sufficient basis for Waltham's complaint. Further, our review of the Company's documentation on its allocation method (Exh. W-2), construed in favor of the non-moving party (i.e., Waltham), at the very least, requires further clarification in order for the Department to ascertain whether the Company made "an inequitable allocation between the municipal and private streetlights" (Exh. W-3, at 28). We conclude that Waltham might be entitled to relief should there be facts that could be proven in support of its claim. Further, since we concluded above that Waltham's complaint was properly pled and that the Company and Waltham agreed for the Department to resolve this dispute, to dismiss this proceeding would be inconsistent with the Department's statutory duty to resolve disputes pursuant to G.L. c. 164, § 34A, and with the terms of the

Purchase and Sale Agreement between Waltham and the Company.⁴ Therefore, we deny the Company's Motion to Dismiss this case.

Waltham's Motion to Admit Documents Subsequent to the Close of the Record

On April 19, 2002, Waltham filed a motion to include into the record of this proceeding two proposed exhibits, exhibits W-4 and W-5 ("Waltham Motion"). Proposed exhibit W-4 is a BECo schedule of additions, retirements, net balances, and depreciation for every year since 1944 for each streetlight account in Waltham. Waltham's counsel stated that this "was provided to the City by NSTAR as part of the purchase price communication with the City on October 18, 2001" (*id.* at 1). Proposed exhibit W-5 is a computer-generated listing of streetlights that the City claims that the Company provided Waltham in "1991 or 1992" (*id.*).

⁴ The Department is resolving this dispute pursuant to its authority under G.L. c. 164, 34A , and not because Waltham and BECo agreed that the Department "determine the purchase price" in the Purchase and Sale Agreement (Exh. W-3, at 28).

Waltham argues that there is good cause for the Department to consider these documents in this dispute. Waltham asserts that

it only became apparent to the City that this type of information . . . might be critical after we reviewed the Company's responses to the Department's second set of information requests, which were handed to us by the Company five minutes prior to the hearing last week, and after we observed the Company's use of this information and the Department's questioning of the Company regarding this information, during the course of the hearing.

(Waltham Motion at 2).

On April 29, 2002, the Company filed: (1) an Opposition to the Request by Waltham to Include Post-Hearing Exhibits in the Record ("BECo Opposition"); and (2) an affidavit of Bryant K. Robinson ("BKR Affidavit"). The Company also moved for the Department to strike pages 9 through 14 (up to the "Conclusions" heading) of Waltham's Reply Brief because this portion attempts to introduce additional facts related to the two post-hearing exhibits (BECo Reply Brief at 1-2, n. 2).

BECo argues that Waltham has failed to demonstrate good cause for including late-filed documents in the record of this proceeding and requests that the Department deny the Waltham Motion (BECo Opposition at 2-6). The Company argues that Waltham failed to follow Department procedures for post-hearing documents, 220 C.M.R. § 1.11(7) (*id.* at 2-3). BECo also asserts that Waltham did not demonstrate good cause as to why the two proposed exhibits should be included in the record "given the ample opportunity for Waltham to file [them] prior to the close of the record" (*id.* at 3). The Company stated that proposed exhibit W-5 "may have been produced by the Company" some time in the past (BKR Affidavit at 4). BECo argues that this document is not relevant to this dispute resolution and that no witness has supported Waltham's counsel's claims regarding the document (BECo Opposition at 5).

Analysis and Findings on Waltham's Motion

Waltham filed proposed exhibits W-4 and W-5 eight days after the dispute resolution proceeding. The Company subsequently filed the BKR Affidavit in support of its opposition to Waltham's Motion. The Department may allow Waltham or BECo to file documents subsequent to the completion of the hearing "for good cause shown." 220 C.M.R. § 1.11(7).

The Company did not refute Waltham's argument that the Company only served responses to the Department's information requests to Waltham five minutes before the dispute resolution proceeding. The Company did file its responses to these requests with the Department on April 9, 2002, two days before the proceeding. The purpose of information requests is to permit "the parties and the Department to gain access to all relevant information in a timely manner." 220 C.M.R. § 1.06(6)(c)(1). The Company's responses are material facts that were subject to cross-examination at the dispute resolution proceeding (*see* Tr. at 69-74). Since these material facts were not disclosed to Waltham until the dispute resolution proceeding on April 11, 2002, Waltham was unable to "gain access to all relevant

information in a timely manner.” We conclude that Waltham has stated good cause for filing these documents after the close of the record.

We next consider whether these two documents should be included in the record of this proceeding. Our regulations state “[t]here shall be excluded such evidence as is unduly repetitious or cumulative or such evidence as is not the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs.” 220 C.M.R. § 1.10(1).

Proposed exhibit W-4 provides (1) gross additions and retirements by year, and (2) dollar amounts for the accumulated depreciation the Company booked to individual street light accounts in Waltham from 1944 to 2000. Waltham sponsored no testimony to explain or authenticate this particular document. However, Waltham’s counsel stated that proposed exhibit W-4 was provided by BECo as part of the purchase price negotiations for Waltham’s streetlights. The Company attested that this exhibit includes “information regarding BECo’s streetlight investment in Waltham since 1944” (BKR Affidavit at 2).

Since Waltham had this document in its possession, the City should have included this document in its initial filing. See Joint Petition of the Towns of Edgartown, Harwich and Sandwich, D.T.E. 01-25 (2001) (Company to determine unamortized investment in towns streetlights using town-specific information). Notwithstanding this omission, we note that the Department asked the Company to submit “complete and detailed documentation” to explain how it determined amounts of accumulated depreciation booked to Waltham’s individual street light accounts in IR-DTE-1-5 (see BECo Reply Brief at 4, n.4). The Company should have included proposed exhibit W-4 as part of its “complete and detailed documentation” in response to this information request.⁵ 220 C.M.R. § 1.06(6). Thus, proposed exhibit W-4 has been in the possession of both BECo and Waltham in the ordinary course of streetlight negotiations prior to this proceeding.

We note that BECo has produced similar documentation in a virtually identical format in the normal course of streetlight negotiations with other municipalities. See Joint Petition of the Towns of Acton and Lexington, D.T.E. 98-89 (1998) (Exh. Acton/Lexington 3, tables 3 and 4); Town of Stoneham Streetlight Conversion Notice to BECo at Appendix B (May 7, 2000) (BECo calculates accumulated depreciation to individual street light accounts in Stoneham). Further, the Company has had the opportunity to comment on this proposed exhibit (BKR Affidavit). We find that this exhibit is authentic, relevant, and that we can rely upon it in resolving this dispute. 220 C.M.R. § 1.10(1). Therefore, we allow the City’s proposed exhibit W-4 to be included in the record of this proceeding as Exhibit W-4.

Proposed exhibit W-5 appears to be a computer-generated listing of certain streetlight equipment in Waltham. Waltham’s counsel states that the document was produced by the Company “in 1991 or 1992.” The Company states that it “may have been produced by the Company at some time in the past and it appears that some of the Company’s commercial streetlight accounts are represented on the document” (BKR Affidavit at 4). Waltham

⁵ In future streetlight dispute proceedings concerning purchase price, we direct distribution companies to submit such documentation.

sponsored no witness to authenticate or explain the circumstances about this document. We find that there is insufficient evidence for us to conclude that this proposed exhibit is accurate and complete. Further, there is no evidence that this exhibit was relied upon in the course of Waltham's streetlight negotiations. We conclude that we can not rely on proposed exhibit W-5 in resolving this dispute.

As noted, the Company filed, after the close of the record, a sworn affidavit from its witness that included comments on both of Waltham's proposed exhibits (BKR Affidavit). In order to allow the Company an opportunity to be heard on Waltham's proposed exhibits, pursuant to 220 C.M.R. §1.11(7), we find good cause to include the BKR Affidavit into the record of this proceeding as Exhibit BEC-BKR (supp.).

We now address BECo's motion to strike certain portion of Waltham's Initial Brief. The portion of Waltham's Initial Brief at issue raises new facts that relate only to Waltham's proposed exhibits W-4 and W-5. We find that these facts were neither previously raised on the record nor supported by a Waltham witness. As such, we grant BECo's motion to strike pages 9 though 14 (up to the "Conclusions" heading) of Waltham's Initial Brief, and we disregard these portions in issuing our Order.

Background of The City's Dispute

On July 25, 2001, pursuant to G.L. c. 164, § 34A, Waltham filed a conversion notice with the Company and the Department regarding its intention to purchase the 3,959 overhead streetlights that serve the City (Exh. W-1 at 1). On December 14, 2001, the Company provided Waltham an updated purchase price of \$674,159.42 (*id.* at 1). The City and the Company executed the Purchase and Sale Agreement that conveyed ownership of the streetlights to the City, effective January 1, 2002 (Exh. W-3). Consequently, the City has been maintaining the streetlights that serve Waltham since January 1, 2002, and receiving streetlight service from BECo pursuant to its S-2 tariff.

BECo books the streetlight equipment located in Waltham to the following accounts: 632 Streetlight Overhead Conductors; 633 Streetlight Underground Conduits; 634 Streetlight Underground Conductors; 635 Municipal Poles, Fixtures, and Luminaires; 636 Commercial Poles, Fixtures, and Luminaires; 637 Outdoor Streetlight Transformers and Control Equipment; and completed equipment not classified ("CCNC") (Exh. W-2, at 2). The equipment booked to accounts 632, 633, 634, and 637 ("ancillary equipment") is used for both municipal and commercial street lights (Exh. W-2, at 2). The Company does not track separately the amounts booked to the ancillary equipment accounts for municipal and commercial streetlights because there is no regulatory or accounting requirement to do so (Exh. BEC-BKR at 4). In order to determine a total price for all the equipment being purchased by the City, the Company allocated the gross investment and accumulated depreciation of the ancillary equipment between the municipal streetlight account and the commercial streetlight accounts (Exh. BEC-BKR at 4-5). The City disputes the method used by BECo to perform this allocation because it believes the results are not equitable (Exh. W-1, at 3).

To make this allocation, the Company first took the gross investment in the CCNC account and allocated it to accounts 632 through 637, based on the proportion of the gross investment of each of these accounts to the total gross investment of accounts 632 through 637 (Exh. BEC-BKR at 5). Likewise, the Company took the accumulated depreciation in the CCNC account and allocated it to accounts 632 through 637 based on the proportion of the accumulated depreciation of each of these accounts to the total accumulated depreciation of accounts 632 through 637 (Exh. BEC-BKR at 5).

Second, the Company allocated the gross investment in the ancillary equipment to the municipal and commercial streetlight accounts, based on the proportion of gross investment, as calculated above, in Municipal Account 635 and Commercial Account 636, to the total gross investment in Municipal Account 635 and Commercial Account 636 (Exh. BEC-BKR at 5). Likewise, the Company allocated the accumulated depreciation in the ancillary equipment to the municipal and commercial streetlight accounts, based on the proportion of accumulated depreciation, as calculated above, in Municipal Account 635 and Commercial Account 636, to the total accumulated depreciation in Accounts 635 and 636 (Exh. BEC-BKR at 6). The ancillary equipment net investment was calculated by subtracting the accumulated depreciation calculated in the second step from the gross investment calculated in the second step (Exh. BEC-BKR-1).

Waltham's Petition contends that BECo's ancillary equipment net investment in Waltham is negative \$29,655.29 (Exh. W-1, at 2). Waltham concludes that, based on the Company's allocation method, BECo allocated 244 percent of the ancillary equipment net investment to the commercial accounts (negative \$72,470.17) (Exh. W-1, at 2). The City argues that BECo's method of allocating Waltham's ancillary equipment net investment between the municipal and commercial accounts, as described above, is not equitable because it resulted in an overstatement of the value of Waltham's streetlights (id. at 3).

Waltham's Position

The City maintains that the Company has not met its statutory obligation to provide the City with the "un-amortized investment allocable to such acquired equipment" (Waltham Brief at 1, citing G.L. c. 164, § 34A(b)). The City states that the \$674,159.42 purchase price for streetlights unfairly overstates the purchase price by making an inequitable allocation of the ancillary equipment between the municipal and commercial customer accounts (Exh. W-1, at 3). Waltham asserts that the unfairness lies in the allocation of a negative \$72,470.17 to the net investment in account 636 (commercial customer accounts) of the Company's purchase price calculation (id. at 3). The City calculates that 244 percent of the negative \$29,655.29 net investment is allocated to the commercial customer accounts (id.). Waltham maintains that it is unreasonable to allocate 244 percent of the net investment available for allocation to only 15 percent of the streetlights in the city (id.).

BECo's Position

The Company states that it has demonstrated why its method comports with reasonable accounting and rate making principles, conforms with the requirements of G.L. c. 164, § 34A,

and takes into consideration the vintages of Streetlights (Company Brief at 7). According to the Company, Waltham has not offered any evidence to refute that method and has not stated a claim to support an alternative method (Reply to Response to Motion to Dismiss at 11). Therefore, the Company maintains that Waltham has not presented sufficient evidence as to why it is entitled to relief (Company Brief at 13).

The Company argues that it made no allocation of the negative value of the ancillary equipment between municipal and commercial customer accounts (Tr. at 15). Rather, the Company states that it allocated the gross investment in the ancillary equipment to the municipal and commercial accounts based on the proportion of the gross investment in the municipal and commercial accounts to the total gross investment in those accounts (Exh. BEC-BKR at 5).⁶ This resulted in 80 percent of the gross investment in the ancillary accounts being allocated to the municipal street light customer and 20 percent being allocated to the commercial street light customers (Exh.BEC- BKR (supp.) at 3-4). In a like manner, the Company allocated the accumulated depreciation for the ancillary equipment to municipal and commercial street light customer accounts based on the proportion of the accumulated depreciation in the municipal and commercial accounts to the total accumulated depreciation in those accounts (Exh. BEC-BKR at 5). This resulted in 60 percent of the total accumulated depreciation for the ancillary equipment to be allocated to the municipal street light customer and 40 percent to be allocated to the commercial street light customers (Exh.BEC-BKR (supp.) at 4).

Analysis and Findings

The Company's proposed method allocates the value of the ancillary equipment to municipal and commercial streetlight accounts using a gross investment allocator and an accumulated depreciation allocator. If the age and vintage of the Company's equipment booked to the ancillary accounts were similar to those of the Company's municipal and commercial accounts (accounts 635 and 636), this method would be fair and reasonable. This is because it would appropriately capture the vintages of the investments made to support both municipal and commercial streetlight service. However, in the case of Waltham, the gross plant additions and gross plant retirements that were booked to accounts 635 and 636 during the five-year period from the end of 1987 through 1992, compared to the equipment booked to the ancillary accounts during the same time period, demonstrates that the age and vintage of these accounts are, in fact, dissimilar (Exh. W-4).

⁶ The Company stated that, in general, it assumes that the age and vintage of the Company's investment in the municipal and commercial accounts are similar to that of the ancillary accounts (BKR Affidavit at 3; Tr. at 75-78).

Specifically, the plant additions from the end of 1987 to the end of 1992 increased the Municipal Account 635 plant balance by \$235,500 (Exh. W-4 at 7).⁷ In addition, the reserve for accumulated depreciation in Municipal Account 635 changed from a positive \$283,698 at the end of 1987 to a negative \$53,296 at the end of 1992, a decrease of \$336,991 (id.).⁸ This decrease was due to the gross retirements that occurred during this five-year period (id.).⁸ In contrast, the ancillary equipment accounts (e.g., Street Light OH Conductors (Acct. 632); Street Light Underground Conduit (Acct. 633); Street Light Underground Conductors (Acct. 634); and Outdoor Street Light Transformers and Control Equipment (Acct. 637)); and the Commercial Account 636, had no corresponding activity during this five-year period (id. at 1-6 and 9-12).

BECo allocated ancillary equipment gross plant between municipal and commercial streetlight accounts based on the proportion of gross plant in the Municipal Account 635 and Commercial Account 636 to total gross plant in those accounts. However, the increase in gross plant additions in Municipal Account 635 between the end of 1987 and the end of 1992 resulted in the Company allocating to the City a greater amount of the ancillary gross plant than to the commercial streetlight accounts. In addition, the Company allocated ancillary equipment accumulated depreciation between municipal and commercial streetlight accounts based on the proportion of accumulated depreciation in the Municipal Account 635 and Commercial Account 636 to total depreciation in those accounts. Because of the decline in the reserve for accumulated depreciation in Municipal Account 635 between the end of 1987 and the end of 1992, the Company allocated a lesser amount of accumulated depreciation to the City than to the commercial streetlight accounts. Thus, the greater gross additions allocated to the City and the lesser accumulated depreciation allocated to the City cause the Company's proposed allocation to overstate the unamortized investment of the streetlights that serve the City. We find that the gross additions and retirements from the end of 1987 through 1992 skewed the Company's allocation of the ancillary equipment between municipal and commercial accounts (see Exh. W-4; Tr. at 69-75, 78-80). Therefore, we find that, due to the additions and retirements to the Municipal Account 635 from the end of 1987 through 1992, the age and vintage of the equipment associated with either municipal or commercial streetlights is not similar to that of the ancillary accounts.

To adjust for this dissimilarity, we conclude that the gross additions and retirements to Municipal Account 635 from the end of 1987 through 1992 must be excluded before the Company allocates the ancillary gross plant and accumulated depreciation between the City and

⁷ Exh. W-4 includes, by year, additions, retirements and net plant of the following accounts for the years 1944 to 2001: (1) Street Light OH Conductors (Acct. 632); (2) Street Light Underground Conduit (Acct. 633); (3) Street Light Underground Conductors (Acct. 634); (4) Municipal Post, Fixtures, Luminaries (Acct. 635); (5) Commercial Posts, Fixtures, Luminaries (Acct. 636); and (6) Outdoor Street Light Transformers and Control Equipment (Acct. 637).

⁸ Gross retirements are recorded for accounting purposes by reducing the reserve for accumulated depreciation with a corresponding decrease in the plant asset account.

commercial streetlight accounts. The Department hereby directs the Company to allocate the ancillary equipment gross plant and accumulated depreciation between the City and commercial streetlight accounts based on the proportion of the municipal and commercial plant balances and accumulated depreciation in Accounts 635 and 636, respectively, to total balances in those accounts as of the end of 1987.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

cc: Mary Cottrell